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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
9 LITIGATION

No. M 07-1827 SI

MDL. No. 1827

10 This Order Relates to:

**ORDER DENYING TOSHIBA ENTITIES'
MOTION FOR SUMMARY JUDGMENT**

11 All Direct- and Indirect-Purchaser
12 Plaintiff Class Actions
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14 On November 4, 2011, the Court heard argument on the Toshiba¹ entities' motion for summary
15 judgment. Toshiba's motion, filed against both the direct- and indirect-purchaser plaintiffs, claims that
16 plaintiffs lack evidence to establish that it participated in the TFT-LCD conspiracy.

17 Arguing that is it "unique among the Defendants in this action," Toshiba emphasizes that it
18 "ha[s] never applied for amnesty, pleaded guilty to criminal price-fixing or been charged with any
19 wrongdoing in the United States or elsewhere." Motion at 1. Despite the fact that plaintiffs have
20 pursued this lawsuit for five years and have benefitted from the cooperation of a number of settling
21 defendants, Toshiba points out that plaintiffs have been unable produce evidence that it ever attended
22 a crystal meeting, and have produced little direct evidence that Toshiba otherwise conspired with the
23 other TFT-LCD manufacturers. Based largely upon *In re Citric Acid Litigation*, 995 F. Supp. 951 (N.D.
24 Cal. 1998), *aff'd* 191 F.3d 1090 (9th Cir. 1999), Toshiba argues that the claims against it should not be
25 allowed to go to trial.

26 This case, however, is a far cry from *Citric Acid*. Although there is no "smoking gun" linking
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28 ¹Toshiba Corporation, Toshiba Mobile Display Co., Ltd., Toshiba America Electronic Components, Inc., and Toshiba America Information Systems, Inc.

1 Toshiba to the crystal meetings, there is ample evidence for a jury to find that Toshiba participated in
2 the overarching conspiracy to fix prices of TFT-LCD panels. To begin with, unlike in *Citric Acid*, no
3 conspirator in this case has unequivocally stated that Toshiba was not involved in the conspiracy. *Cf.*
4 *Citric Acid*, 996 F. Supp. at 956 (“Most persuasive is the testimony of Hans Hartmann, . . . who pled
5 guilty to being a member of the conspiracy [and] stated that no one from Cargill attended any of the
6 meetings at which the conspirators allocated market share . . . and that he never received sales figures
7 from Cargill.”). In fact, quite the opposite is true: Samsung employees have testified that they had
8 ongoing discussions with Toshiba representatives during which they agreed on prices of TFT-LCD
9 panels. The Samsung employees testified that these conversations were “illegal” and included
10 “information that . . . should not be shared among competitors.”

11 The circumstantial evidence of Toshiba’s participation in the overarching conspiracy is also
12 significantly more compelling than the evidence in *Citric Acid*. Viewed in the light most favorable to
13 plaintiffs, as is required on motions for summary judgment, there is ample evidence from which a jury
14 could conclude that Toshiba was informed of the decisions reached at crystal meetings through bilateral
15 communications with other TFT-LCD manufacturers. There is also sufficient evidence for a jury to find
16 that Toshiba received pricing information from its competitors, shared its own pricing information, and
17 was aware of its wrongdoing. Although Toshiba argues that its interactions with its competitors
18 constituted nothing more than legitimate exchanges of information, such disputes regarding the
19 interpretation of evidence are not appropriate for resolution on summary judgment.

20 Accordingly, the Court DENIES Toshiba’s motion for summary judgment. Docket Nos. 3580,
21 3581.

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23 **IT IS SO ORDERED.**

24 Dated: November 7, 2011

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26 SUSAN ILLSTON
27 United States District Judge
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